IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Jai Prakash Rakhecha Vs. State of Rajasthan

S.B.CR.REVISION PETITION NO.41/2006

against the judgment and order dt.29.10.2005 passed by Additional Sessions Judge No.2, Jodhpur in Cr.Appeal No.61/2005.

DATE OF ORDER :: April 25, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Khushal Goyal, for the petitioner.
Mr. J.P.S.Choudhary, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter), the petitioner has assailed the judgment and order dt. 29.10.2005 passed by Additional Sessions Judge No.2, Jodhpur (for short `the appellate court` hereinafter) in criminal appeal No.61/2005, whereby the appeal filed by the petitioner against the judgment and order dt. 30.9.2005 passed by Judicial Magistrate No.3, Jodhpur (for short `the trial court' hereinafter)

was dismissed and the conviction and sentence of fine awarded against the petitioner by the trial court for the offence under section 131(2) of Representation of People Act was affirmed. Aggrieved by the judgments and orders impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the judgments and orders impugned passed by both the courts below and the record of the trial court.

On a complaint lodged by PW.2 Farida, the police investigated the matter and filed a challan against the petitioner for the offences under sections 323, 341, 325/34, 354/34 I.P.C. and section 131(2) of the Representation of People Act. During the pendency of the case, the complainant compounded the offences punishable under the Indian Penal Code and, therefore, the offence on being compounded by the complainant, the petitioner was acquitted of the offences under the Indian Penal Code, however, he was convicted for the offence under section 131(2) of the Representation of People Act and sentenced to fine of Rs.200/-.

From perusal of the record, there is absolutely no evidence that the petitioner in any manner contravened or wilfully aided or abetted the contravention of the provisions of sub-section(1) of section 131 of the Representation of People Act. In the first information report, the allegation was against one Shakuntala Rakhecha, who was a contesting candidate for the municipal election as rival candidate of PW.2 Farida.

I have carefully gone through the statement of PW.2 Farida. In her statement, it nowhere appears that the petitioner contravened any of the provisions of the Representation of People Act much less the provisions of sub-section(1) of section 131. Section 131 of the Representation of People Act reads as under:-

> **"131. Penalty for disorderly conduct in or near polling stations--**
>
> (1) No person shall, on the date or dates on which a poll is taken at any polling station-
>
> a- Use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as megaphone or a loudspeaker, or

> b- shout, or otherwise act in a disorderly manner within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.
>
> (2)Any person who contravenes, or wilfully aids or abets the contravention of the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both."

Sub-section (1) of section 131 provides that no person shall use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as megaphone or a loudspeaker, or otherwise act in a disorderly manner within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof so as to cause annoyance to any person visiting the polling station for casting the vote. There is absolutely no evidence on record that any person visiting the polling station to cast the vote to whom the petitioner caused any annoyance or to any of such persons. Obviously, such evidence not being on record as is evident from

the record that the complainant No.2 herself compounded the offences punishable under the Indian Penal Code and therefore, in absence of the evidence making out the essential ingredients of an offence under section 131(2) of the Representation of People Act, both the courts below fell in error in convicting and sentencing the petitioner for the offence under section 131(2) of the Representation of People Act.

Consequently, the revision petition is allowed. Order of the trial court dt. 30.9.2005 convicting and sentencing the petitioner with the fine as affirmed by the appellate court vide judgment and order 29.10.2005 are set aside. The petitioner is acquitted of the charge under section 131(2) of the Representation of People Act. The amount of fine if deposited by the petitioner, the same shall be refunded to the petitioner. Stay petition also stands disposed of.

[H.R.PANWAR],J.

m.asif/-